No.10- COURT'S ORDER WHETHER THE CASE IS OR NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2)(b)]

Description of Case

Criminal appeal No. 410 of 2001
(Old Criminal Appeal No. 1904 of 1998)

1. Rajendra Singh
2. Ishwari Devi

Vs.

State of U.P.

A.F.R. (Approved for Reporting)
~~Not approved for Reporting~~

(B.S. Verma, J.) **(Irshad Hussain, J.)**
Date September 21, 2005 *Initials of Judge.*

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Appeal No. 410 of 2001
Old No. Criminal Appeal No. 1904 of 1998

1. Rajendra Singh, S/o Guman Singh,
2. Ishwari Devi, D/O Guman Singh,
   Both residents of village Airi (Tadi), Patti Kalukhan,
   Tahsil Champawat, District Pithoragarh.

…Appellants.

Versus

State of Uttar Pradesh. … Respondent.

Sri M.C. Pandey, Advocate, learned counsel for the appellant-accused.
Sri H.C. Pandey, Learned A.G.A. for the respondent-State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S.Verma, J.

Dated, September 21, 2005

(Per Hon'ble B.S.Verma, J.)

This criminal appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment and order of conviction, dated 12-8-1998 and 13-8-1998, passed by the then Sessions Judge Pithoragarh, whereby the appellant were convicted under Section 302/34 of the I.P.C. and sentenced to undergo life imprisonment, while three others namely Smt. Savitri Devi, Sher Singh and Prahlad Singh were acquitted. The said judgment was passed in Sessions Trial Nos. 4 of 1996 and 34 of 1996, which were consolidated for trial.

2. Brief facts of the case are that Sundar Singh son of Mohan Singh lodged a written report (Ext. Ka-4) with Patwari Kaluakhan stating therein that Smt. Hira Devi, wife of accused Rajendra Singh was done to death 16-10-1995 between 12 noon and 1 p.m. by her husband and his sister Km. Ishwari Devi. The incident was witnesses by Madan

Singh and his companion graziers. Check F.I.R. Ext. Ka-5 was prepared by the Patwari concerned and a case was registered under Section 302 I.P.C. against the accused persons.

3. Investigation of the case was taken up by the Patwari Diwan Singh, who went to the spot on 17-10-1995. Patwari took into custody the dead body of the deceased Smt. Hira Devi and conducted the inquest proceedings (Ext. Ka-2) after appointing Panch. The Investigating Officer sealed the dead body and after preparing relevant papers including Photo Lash, Ext. Ka-6, sent the same for Post Mortem Examination. The I.O. inspected the spot and prepared Memo, Ext. Ka-8. He also prepared the site-plan of the place of occurrence, Ext. Ka-7. After recording statements of witnesses and completing the necessary formalities, he found a prima facie case against five accused namely Rajendra Singh, Km. Ishwari Devi, Sher Singh, Savitri Devi and Prahlad Singh under Sections 302/109 and 201 IPC and accordingly submitted charge-sheets, Ext. Ka-9 and Ka-10 against them, to the court of C.J.M. Pithoragarh.

4. Since the offences were exclusively triable by the Courts of Sessions, the case against the accused persons was committed to the Sessions Judge for trial. The learned Sessions Judge charged the accused-appellants as well as Savitri Devi and Prahlad Singh under Section 302/34 of the I.P.C., while accused Sher Singh was charged under Section 302 read with Section 109 IPC to which they pleaded not guilty and claimed to be tried.

5. The prosecution in order to bring home guilty to the accused examined as many as ten witnesses before the trial court. P.W.1 Navin Singh, P.W.2 Hem Raj Singh, P.W.3

Deepak Singh, P.W.4, Madan Singh and P.W.6 Smt. Maya are the eye witnesses. Other witnesses are P.W.5 Dr. Narain Chakravarty, the Medical Officer, who conducted autopsy on the dead body. P.W.7, Harak Singh is a relation of the accused persons and is a witness of inquest. P.W.8, Deb Singh Basera was Kanungo Champawat in the year 1995 and the occurrence took place within his circle. This witness deposed about a criminal proceeding under Sections 107/116 Cr.P.C. which was initiated against the accused side on the report made by Hira Devi deceased, wife of accused Rajendra Singh. P.W.9 Sundar Singh is the scribe of the written report as mentioned earlier. P.W. 10, Diwan Singh Mehra, Patwari, is the Investigating Officer of the case. He gave evidence to prove the investigation part of the case.

6. P.W.1 Navin Singh has not at all supported the prosecution version and he was declared hostile and cross-examined by the prosecution. Nothing material could be elicited against the accused persons from his cross-examination by the D.G.C. (Criminal). Similarly, P.W.2 Hema Raj Singh also did not support the prosecution story in his statement on oath and he also turned hostile. Same is the position of P.W.3, Deepak Singh. There is nothing incriminating against the accused in his statement. The ocular testimony of two remaining eye-witnesses P.W. 4 Madan Singh, who has been named in the F.I.R., and P.W. 6 Smt. Maya, relied upon by the prosecution is detailed below.

7. P.W.4, Madan Singh, in his statement has stated that he knew all the accused persons. Deceased Hira Devi was the wife of accused Rajendra Singh. Ishwari Devi is his sister, Sher Singh and Prahlad Singh are brothers of accused Rajendra Singh while Smt. Savitri Devi is an aunt of Rajendra Singh. He stated that earlier the relations between the

accused Rajendra Singh and his wife were cordial. Lateron Rajendra Singh and his family members questioned the character of Hira Devi and ousted her from house and since then she used to live in a separate house with her daughter of tender age. Litigation was pending between Hira Devi other members in Lohaghat court.

8. Regarding actual occurrence, PW 4 has stated that on 16-10-95, he had gone to jungle accompanied by three children, namely, Deepak Singh, Navin Singh and Hem Raj Singh of village Racheli, for grazing their goats. At about 9-10 a.m., he heard shouts of a woman for rescue from the side of plot of Rajendra Singh situate in the Abadi. He inquired and saw that Rajendra Singh armed with lathi and Ishwari Devi armed with *Daranti* were chasing Hira Devi. Then, the pushed her on the ground from her back. Prahlad Singh and Savitri Devi were also standing there. In the meantime, he did not hear shouts any more, so he did not pay much attention because they used to quarrel quite frequently regarding agriculture produce and Hira Devi was used to be beaten by the husband. After some time, he saw that Rajendra Singh and Prahlad Singh were going towards 'Khetikhan' at about 11-12 noon and he himself went to take his meal at 1 about p.m. The Sundar Singh, his cousin, informed him that the accused persons were beating Hira Devi in their plot. Again, after taking his meal, he went for grazing the cattle and when he returned, he was informed by Sundar Singh that Hira Devi suffered number of injuries and she was done to death. In his cross-examination, he stated that the occurrence was witnessed by him from a distance of ½ km. He further stated thatat the ridge where Hira Devi was assaulted, there is a water spring (Naula) downwards, which was not clearly visible. P.W.4 further stated that his father used to go with Hira Devi to attend the court as she was all

alone. He admitted that he had told Patwari about the place where Hira Devi was pushed off on to the ground, but he cannot say why the Patwari did not mention this fact in the statement under Section 161 Cr.P.C. He also stated that he did not tell the Patwari that Rajendra Singh and Prahlad Singh went to 'Khetikhan'. According to him, Sher Singh was not seen by him near the place of the occurrence. He lastly stated that his father is the real brother of the father of Sundar Singh (PW9), who is the scribed of the written report.

9. P.W.5, Dr. Narain Chakavarty and Dr. Umesh Singh Adhikari have together conducted Post Mortem Examination on the dead body of the deceased on 18-10-1995 at 1 p.m. At the time of post mortem, maggots were found present in the mouth and face and decomposition of body had started. The doctors found following ante mortem injuries on the dead body of Hira Devi:-

1. Fracture of shaft of right humerus and swelling in middle area of shaft. Haematoma present inside.

2. Contused abrasion right upper arm 8 cm. below right shoulder 3 cm x 2 cm. Irregular in shape.

3. Contused abrasion upper elbow about 4 cm X 3 cm. Anterior laterally irregular in shape.

4. Lacerated wound right upper arm about 2 cm. X 1.3 cm about elbow joint.

5. Contused abrasion on right leg about 4 cm. X 5 cm. Anterior lateral, 6 cm. below right knee joint.

6. Multiple punctured wound on right leg or right knee just above the right ankle joint unto lateral surface ten in number, about 1,1/2 cm x ½ cm x 2 to 3 cm. deep. Margins are sharp, clear, spindle shape different size with different depth.

7. Punctured wound in left mid thigh about 2 cm. x ½ cm. x 2 cm. deep, situated anterior laterally.

8. Punctured wound in left popetial fossa about 2 cm. x ½ cm. x 2 cm. deep incised popetial vessels in two parts after opening of the popetial fossa.

10. On internal examination, membranes of skull and brain were found congested. Pleura and larynx were also congested. Both the chambers of heart as well as stomach were found empty. Gases and faecal matters were found in the small and large intestines. In the opinion of the autopsy surgeon, death was caused due to excessive bleeding and shock and duration of death was about 3 days at the time of autopsy. P.W.5 in his statement stated that injury nos. 1 to 5 were possible by Lathi and Danda blows while injury nos. 6 to 8 were possible by some sharp edged curved weapon like Daranti. The injuries on the person of deceased were sufficient to cause death in the ordinary course of nature.

11. The next important witness of the prosecution is P.W.6, Smt. Maya. She is '*Devrani*' of accused Smt. Savitri Devi and a close relation of the accused persons. Regarding actual occurrence, P.W.6 has stated on oath that accused Rajendra Singh, Prahlad Singh were assaulting Hira Devi by Lathi, while Smt. Savitri Devi and Km. Ishwari Devi were giving Daranti blows to Hira Devi. The occurrence took place in the field of Rajendra Singh were '*Madua*' crop was standing. This witness has stated that she saw the occurrence from the water-spring and the place of incident was clearly visible from that place. The distance between the two place was stated to be 50 years. She further deposed that at the relevant period, Hira Devi was living along with her child in a hut belonging to Rajendra Singh near her house. She further stated that Durga Devi, mother of accused Rajendra Singh, imputed illicit relations between her husband Kundan Singh and Hira Devi. She further stated that the

allegation of illicit relations between the two was totally false, though for this reason, Rajendra Singh ousted Hira Devi from his house. In her cross-examination, she admitted that she had not gone near the dead body of Hira Devi. She also stated that she did not tell the incident to any body on that day, rather she presumed that Hira Devi was being assaulted as usual by the husband and other family members. She did not inform any body even till third and fourth day. In her cross-examination, in para no. 5, she admitted that Hira Devi lived for 6-7 days with them when Hira Devi was ousted from the house by the accused after beating.

12. P.W. 7 Harak Singh is a relation of the accused. According to him on the day of occurrence, i.e. 16-10-1995m he was ploughing his land at about 9.00 a.m. At that time accused Rajendra Singh was also engaged in ploughing his field. Smt. Savitri Devi (accused) came there and whispered something to Rajendra Singh. Whereupon Rajendra Singh immediately stopped ploughing the filed and went away from there. Smt. Savitri Devi then took away the two bullocks from there.

13. PW 8, Dev Singh Basera, was Kanungo Champawat in the year 1995. He has deposed that on 27-6-1995 Hira Devi made a report to him against Rajendra Singh, Shyam Singh, Prahlad Singh and other regarding family matter and he conducted inquire thereon and in turn, he submitted challani report under Sections 107/116 Cr.P.C. against Shyam Singh, Rajendra Singh, Sher Singh, Prahlad Singh and Durga Devi. He also stated that S.D.M. Lohaghar issued notices to the opposite parties in the proceedings and during the pendency of the case, Hira Devi was done to death. He proved challani report of the proceedings as Ext. Ka-3.

14. The accused persons were examined under Section 313 Cr.P.C. All the accused have denied the accusations levelled against them and alleged their false implication out of enmity.

15. After hearing the submissions of learned counsel for both the parties and perusing the evidence on record, the learned Sessions Judge passed the impugned judgment convicting and sentencing the appellants as aforesaid.

16. In support of appeal, it has been contended on behalf of the appellants that the impugned judgment is perverse, illegal and against the evidence on record. It has been argued that the prosecution has utterly failed to prove its case against the appellants by cogent, reliable and independent witnesses. It was further submitted that the witnesses were inimical to the accused-appellants. Lastly, it was submitted that the learned Sessions Judge committed manifest error in convicting Km. Ishwari Devi, while co-accused Smt. Savitri Devi who allegedly was armed with Daranti was acquitted on the basis of the same evidence on record. It was also pointed out that the eye-witnesses, i.e. P.W.1, P.W.2 and P.W.3 have not at all supported the prosecution version.

17. The learned A.G.A. while supporting the impugned judgment submitted that the conviction of the appellants is based on proper appraisal of the evidence on record.

18. It may be mentioned at the outset that in the written report, only two persons, who are appellants before

this Court, were named as the culprits, who committed murder of Smt. Hira Devi, the wife of Rajendra Singh, appellant no.1 and specific name of Madan Singh (PW 4) was mentioned as eye witness who along with some other cattle-graziers, was at the scene of incident. It also comes out from the record that during investigation, the I.O. P.W. 10 arrived at the conclusion that in the alleged crime, besides those two, accused, Prahlad Singh, Smt. Savitri Devi and Sher Singh were also involved in the crime. According to the prosecution evidence, Prahlad Singh accused armed with Lathi and Smt. Savitri Devi armed with Daranti along with these accused-appellants took part in the assault, which ultimately resulted in the death of the victim. Sher Singh was standing there at the scene of occurrence. The learned Sessions Judge after appreciating the material on record and particularly relying upon the evidence of P.W. 4 Madan Singh, P.W.6 Smt. Maya and P.W.7 Harak Singh came to the conclusion that accused Rajendra Singh and his sister Km. Ishwari Devi were responsible for the offence of murder and accordingly convicted and sentenced them, while the remaining three accused were acquitted. It may be noted that no Government Appeal has been preferred against the order of acquittal, therefore, in these premises, it is necessary that the role of appellants Rajendra Singh and Km. Ishwari Devi has to be scrutinized and thrashed out separately. In such circumstances, repetition of evidence is bound to be there to some extent for ready reference and just decision of the case.

19. It is admitted case that deceased Hira Devi was the wife of accused-appellant Rajendra Singh, who died on 16-10-1995. The homicidal death of Smt. Hira Devi is fully established from the inquest proceedings and medical evidence. It is also admitted to the accused Rajendra Singh

that proceedings under Sections 170/116 of the Cr.P.C. were initiated by Hira Devi against him as well as Prahlad Singh and others, which was inquired into by PW 8, Dev Singh Basera and a challani report was filed in the court of S.D.M. Lohaghat. In the background of these premises, it has to be seen whether Smt. Hira Devi was done to death by the accused-appellants.

20. First of all we take up the case of prosecution so far as the role of accused-appellant Rajendra Singh, who is the husband of the deceased Hira Devi is concerned. So far as motive behind the crime is concerned, accused Rajendra Singh in his statement under Section 313 Cr.P.C. deposed that Kundan Singh used to tell him that though Hira Devi was his wife but she had a fancy for Kundan Singh who intended to keep her with him. This statement of the accused-appellant coupled with the fact that Hira Devi initiated proceedings under Sections 107/116 Cr.P.C. against him are clearly indicative of the fact that the accused had a motive to part with his wife. From the above narration of the statements of the witnesses of fact, it is fully proved that frequent beating of Hira Devi was being done by the accused Rajendra Singh because he suspected illicit relations between his wife Hira Devi and one Kundan Singh. The defence appear to have taken the stand that Kundan Singh Singh, who is husband of P.W.6 Smt. Maya Devi, developed illicit relations with Smt. Hira Devi and since he wanted to keep her as his concubine, the accused-appellant Rajendra Singh was implicated falsely in the case. Learned counsel for the appellants submitted that no reliance can be placed on the testimony of interested and family witnesses produced in the case. According to the prosecution, accused Rajendra Singh had turned out his wife Hira Devi from his house

suspecting her illicit affairs with said Kundan Singh. It has come in the evidence of P.W.8 Deb Singh Basera, Kanungo, that during the inquiry under Section 107/116 Cr.P.C., possession of one of the rooms of the house of accused-husband was delivered to Smt. Hira Devi, when Smt. Hira Devi was living at the house of Bahadur Singh along with her eight months old baby. PW 6, Smt. Maya in para no. 4 of her statement has said that at the relevant time Hira Devi was living in the hut of Rajendra Singh near their house along with her baby. She has stated in clear terms that Smt. Hira Devi was imputed illicit relations with her husband which was the main cause of family dispute between Durga Devi (mother-in-law if Hira Devi) and Bachchi Devi (mother of Kundan Singh) and Hira Devi was living separately. She clearly stated that the allegation of illicit relation between her husband and Smt. Hira Devi, the deceased, and that the deceased was ousted from the house by the husband Rajendra Singh on that score was baseless. Regarding actual occurrence, PW 6 stated that at the relevant time, she had gone to her field and at the time of occurrence, she had gone near the water channel. From the higher place she heard shouts and then she moved forward about 5 paces from the *Dhara* (water-spring) to make herself aware as to what is happening there. She then saw that Rajendra Singh and Prahlad Singh were beating Hira Devi in the company of Smt. Savitri Devi and Km. Ishwari, who were giving blows by *Daranti* to used the said victim. The assault was made in the field of accused Rajendra Singh, were *Madua* crop was standing and the spot was visible clearly from the place where she was standing. She saw the occurrence from a distance of 50 yards. It has been submitted on behalf of the appellants that P.Ws. 4 and 6 could not have been in a position to witness the assault from a long distance as given by them. It may be noted that PW 6 is a rural lady and distance was given by her on the basis of

mere casual estimation. It has not been shown by the defence that PW 6 was a literate day having perfect idea of actual distance. In these circumstances, it is difficult to accept that PW 6 could not have seen the occurrence from that place.

21. P.W.4 Madan Singh has testified that his father Bahadur Singh used to accompany Hira Devi on the date fixed in the court as she was all alone. So far as actual occurrence is concerned, PW 4 has stated that on the fateful day, he had gone to jungle along with three boys Deepak Singh, Navin Singh and Hemraj Singh (PW 3, PW 1 and PW 2 respectively). As mentioned earlier all these P.Ws. 1 to 3 turned hostile to the prosecution and did not support the prosecution story at all. Since PW 4 is named as eye witness, his statement has to be scrutinized with care. He further stated that between 9 and 10 a.m. shouts of a woman '*Bachao-Bachao*' came from the side of Abadi plot of accused Rajendra Singh. He saw that Rajendra Singh and Km. Ishwari Devi were chasing Hira Devi. Rajendra Singh was having Lathi in his hand while Km. Ishwari Devi was carrying a Daranti. After successful chasing, they pushed her down from her back. Prahlad Singh and Smt. Savitri Devi (who were acquitted by the Sessions Judge) were also standing at that place. Shouts for help ceased thereafter. In his cross examination, PW 4 has admitted that there was a hilly ridge between the place of occurrence and the place where he was standing and the distance was about ½ km. He clarified that the ridge was in the middle and it was not high rising and, therefore, he was able to clearly see the incident. Madan Singh PW 4 also stated that Rajendra Singh, Sher Singh and Prahlad Singh are brothers and Km. Ishwari Devi is their sister, while Smt. Savitri Devi is their aunt. The relations of Rajendra Singh and Hira Devi were

cordial earlier. Lateron, accused Rajendra Singh ousted her from the house suspecting her to be a women of bad character having illicit relations with Kundan Singh, the husband of PW 6 Maya.

22. It is established on record that on the account, Hira Devi was compelled to live in a separate house of accused Rajendra Singh along with her infant baby. From the evidence on record it comes out that Hira Devi wanted to enforce her right over landed property of her husband, which resulted in initiation of proceedings under Sections 107/116 Cr.P.C. and the same was pending in the court of S.D.M. Lohaghat at the relevant time.

23. PW 7 Harak Singh has stated that on 16-10-1995 at about 9 a.m. he was ploughing his field and accused Rajendra Singh was also ploughing a portion of the same-field which fell in his share. In the meantime, Smt. Savitri Devi came from the upper side and she told something to Rajendra Singh in a very low voice. Rajendra Singh immediately freed his oxen and went away, while the oxen were taken away by Smt. Savitri Devi. This statement of PW 7 was not at all challenged in the cross-examination by the defence. This is a strong circumstance to establish that accused Rajendra Singh and Smt. Savitri Devi both were present in the vicinity.

24. P.W.9 Sundar Singh is the scribe of the F.I.R. In his testimony, he has stated that on 16-10-1995, Hira Devi came to his house and she left her child at his house and then she went to cut the *Madua* crop. She had told him that she has preferred to go to the field today as she has to go to Lohaghat court next day to attend the date fixed in the proceedings. He also stated that proceedings were going on

between Hira Devi and Rajendra Singh on Lohaghat Court. It is of significance to mention that this part of his statement that at the relevant time, Hira Devi had gone to cut *Madua* crop was not at all challenged in the cross-examination.

25. PW 10, Investigating Officer, has proved the site plan of the place of occurrence (Ext. Ka-7). The Investigating Officer has marked place 'A' where the deceased had kept *Madua* crop in a sack/canvas bag. At place 'B', fresh-cut *Madua* were found. At place C, one Hawai Chappal (slipper) of the deceased was found. At place 'D' another slipper was found and at place 'E', bangles of deceased and a knife were recovered. At place 'F', dead body was found. In Ext. Ka-7, map of all necessary and relevant place has been shown. It has not been disputed by the appellants that on 16-10-95, harvesting of *Madua* crop was not possible, rather the *Madua* crop is generally ready to reap in the month of October in the hills. PW 10 has stated all necessary facts in his evidence and has fully proved the site plan. He was cross-examined at length, but the defence could not extract anything favourable to the accused Rajendra Singh so as to dispute his presence in the village as well as to show that Hira Devi deceased was not present in the field to cut *Madua* crop.

26. The evidence as referred above and all the circumstances borne out of the testimony of witnesses coupled with the fact that the I.O. recovered fresh cut *Madua,* slippers and bangles of the deceased near the dead body and also a knife from there lead to the inference that accused Rajendra Singh as well as deceased Hira Devi were very much present at the spot, when Hira Devi was done to death and it was accused Rajendra Singh, who could have assaulted her there at that time.

27. The motive part of the case is also necessary to be referred. It is true that the eye-witnesses P.W.1 Navin Singh, P.W.2 Hem Raj Singh and P.W.3, Deepak Singh produced by the prosecution have not at all supported the prosecution story. It is also true that the witnesses of the prosecution are all relations of each other. The husband is the main culprit. Since the motive behind the murder is family dispute and suspicion of accused Rajendra Singh against his wife on account of alleged illicit relations between his wife Hira Devi and one Kundan Singh, therefore, naturally in such a case absence of corroboration by any independent witnesses shall not have material bearing on the otherwise proved facts and circumstances of the case. it may be noted here that in the statement under Section 313 Cr.P.C., accused Rajendra Singh could not say a single word as to how his wife Smt. Hira Devi had died on the fateful day, i.e. 16-10-1995 and it is surprising that Rajendra Singh could not dare say a single word as to where he remained on 16-10-1995 when Hira Devi breathed her last and that too in his own Abadi plot. In the facts and circumstance of the case, the accused has failed to discharge the onus as lay upon him under Section 106 of the Evidence Act. He has denied all the accusations and he went on saying that Kundan Singh used to tell him that although Hira Devi was his (Rajendra Singh's) wife but she had a fancy for Kundan Singh, who was willing to keep her as his concubine.

28. Now, it has to be examined whether Km. Ishwari Devi can also be held responsible for the murder of Hira Devi and whether the prosecution has proved its case by cogent and reliable evidence against her also.

29. It is not disputed that P.W.6 Smt. Maya is the wife of said Kundan Singh. She is the only witness who has deposed that accused Rajendra Singh and Prahlad Singh were assaulting Hira Devi by Lathi blows and Smt. Savitri Devi and Km. Ishwari Devi were giving *Daranti* blows to her in the field of accused Rajendra Singh. On the other hand, P.W. 4 Madan Singh, who is the only named witness in the F.I.R. along with other graziers (*Gwale*) while narrating the prosecution version deposed this much only that Rajendra Singh and Km. Ishwari Devi were running behind Smt.Hira Devi, while Km. Ishwari Devi was armed with *Daranti* and Rajendra Singh was having *Lathi* in his hand. After chasing her, they pushed her down on the ground from her back. Prahlad Singh and Smt. Savitri Devi were also present there. In the meantime, the voice of cries stopped and he did not pay attention any more. He further stated that they (Hira Devi and Rajendra Singh) often quarrelled in connection with agriculture land and Rajendra Singh had beaten Smt. Hira Devi in the past. At about 11-12 a.m. Rajendra Singh and Prahlad Singh were seen going towards 'Khetikhan'. This witness nowhere stated that Km. Ishwari Devi gave Daranti blow on the person of Smt. Hira Devi. In the testimony of these two witnesses, P.W. 4 and P.W. 6, there is no consistency about the role assigned to Km. Ishwari Devi. In other words, we are convinced that there is no acceptable evidence as may lead to the irresistible inference that Km. Ishwari Devi joined hands with her brother Rajendra Singh and had, in fact, wielded a *Daranti* against the victim. The prosecution, in our opinion, has failed to place on record that Km. Ishwari Devi, the sister of accused Rajendra Singh, could have any intention and motive to commit murder of Hira Devi or that she had accompanied Rajendra Singh in furtherance of common intention of both of them of eliminate Hira Devi. In the challani report, Ext. Ka-3, Smt. Hira Devi

had named Shyam Singh, Rajendra Singh, Sher Singh, Prahlad Singh and Smt. Durga Devi widow of Guman Singh (mother of accused Rajendra Singh) from whom she apprehended breach of peace. This challani report was submitted on the report dated 27-6-1995 made by the deceased Hira Devi. It is thus noteworthy that Smt. Hira Devi had not made a complaint against Km. Ishwari Devi.

30. From the above narration of the entire material on record, we find that the learned Sessions Judge was not justified to come to the conclusion that Smt. Savitri Devi alone had no hand in the commission of crime. In our considered view it will not be legally safe to hold Km. Ishwari Devi guilty for the offence of 302/34 I.P.C. when on the sole testimony of PW 6, Smt. Maya, accused Smt. Savitri Devi was absolved from the responsibility of giving blows to the victim by *Daranti*. It is true that Madan Singh, PW 4, has stated that at the time of chasing, Km. Ishwari Devi was armed with Daranti, but he could not dare say that even a single blow was given by her to the deceased when the occurrence took place. According to P.W.6, Maya Devi, she witnessed the occurrence from a distance of 50 yards. Two ladies were having *Daranti* in their hands. In our view it will not be safe to conclude that PW 6 could have been in a position to assess as to which of the two ladies was giving *Daranti* blow to the deceased. The testimony of PW 6 finds corroboration from the testimony of PW 4 Madan Singh only to the extent that Km. Ishwari Devi armed with *Daranti* was running behind the deceased along with Rajendra Singh. Unless it is proved by the cogent and reliable evidence of prosecution that accused Km.Ishwari Devi had common intention with accused Rajendra Singh. Her involvement in the crime appears to be doubtful. It is common knowledge that in the villages of the hills, ladies keep *Daranti* to cut

grass, wood, etc. while working in the field or jungle. As mentioned above, the statement of PW 6 Smt. Maya does not find corroboration from the testimony of PW 4 Madan Singh, who has been especially named as eye-witness so far as assault by *Daranti* by Km. Ishwari Devi to the victim is concerned. According to prosecution a 'knife' was also recovered from the place of incident, as shown in the site plan, Ext. Ka-7, and despite this is was not explained as to who carryied that knife at the place of incident. Knife can very well be used to cause incised wounds and in the peculiar circumstances of the case, especially in the face of inconsistency in the evidence of P.W. 4 and P.W. 6, the possibility cannot be ruled out that accused Rajendra Singh was also having knife with him and could have given its blows also on the person of the victim. The learned Sessions Judge failed to take into account this aspect of the matter in proper perspective and merely went by the evidence of P.W. 6 Smt. Maya, to infer that incised wounds were probably sustained by the victim at the hands of Km. Ishwari Devi. In out view on the basis of the evidence of the prosecution, the benefit of doubt should have also been given to Km. Ishwari Devi, as has been extended to co-accused Smt. Savitri Devi. We are, therefore, unable to agree with the finding of the learned Sessions Judge so far as conviction of Km. Ishwari Devi is concerned particularly when Smt. Savitri Devi was acquitted on the strength of same evidence on record.

31. Upon re-evaluation of the evidence led by the prosecution before the trial court, we find that the prosecution has been successful to bring home the guilt against accused-appellant Rajendra Singh alone. Accordingly he has to be held guilty of an offence under Section 302 I.P.C. instead of Section 302/34 of the I.P.C. and to maintain his conviction and sentence to imprisonment for life under this count. The

conviction and sentence passed against Km. Ishwari Devi has, therefore, to be set aside.

32. In the result, the appeal deserves to be partly allowed, which we direct Appellant no.2 Km. Ishwari Devi is hereby acquitted of the charge under Section 302/34 I.P.C. levelled against her. Her conviction and sentence are set aside. She is on bail. She need not surrender. Her bail bonds are hereby cancelled and the sureties are discharged.

33. The accused-appellant Rajendra Singh is held guilty, convicted and sentenced under Section 302 I.P.C. and the judgment dated 12/13-8-1998 against him is affirmed accordingly.

34. Rajendra Singh is in jail. He shall serve out the life sentence awarded to him.

35. Let the record be transmitted to the Sessions Judge Pithoragarh for compliance to be reported to this Court in two months.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

RCP